

ORIGINAL

**U.S. DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS**

**FILED**

MAR 18 2003

**CLERK, U.S. DISTRICT COURT**

**By**

### Deputy

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

ORIX CAPITAL MARKETS, LLC

Plaintiffs

V.

UBS WARBURG, INC.,  
UBS WARBURG REAL ESTATE SECURITIES  
INC., UBS PAINEWEBBER INC., AND  
PAINEWEBBER MORTGAGE  
ACCEPTANCE CORPORATION V,

## Defendants.

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Civil Action No.: 3-02-CV-2212-K

## **PLAINTIFF'S MOTION TO DISMISS AND BRIEF IN SUPPORT THEREOF**

TO THE HONORABLE JUDGE OF THIS COURT:

Plaintiff ORIX Capital Markets, LLC has determined it no longer wishes to prosecute the instant action and instead will seek relief in the context of a state court action currently on file. There is no answer, counterclaim, or motion for summary judgment on file in this action, and no Defendant will suffer plain legal prejudice from the dismissal.

Pursuant to Fed. R. Civ. P. 23(e) and 41(a), Plaintiff requests that this Court dismiss the instant action without prejudice. Moreover, because Plaintiff will continue to seek relief in its representative capacity on behalf of all putative absent class members through an ongoing state court proceeding. That proceeding includes breach of contract claims based on the representations and warranties that formed the basis of the securities fraud claims asserted herein. Thus, no putative absent class member will be prejudiced by this dismissal.

The continuation of the state court proceedings and the fact that the Plaintiff has received no payments or benefits from the defendants in connection with the dismissal demonstrates that the instant dismissal is not the product of any collusive settlement with Defendants.

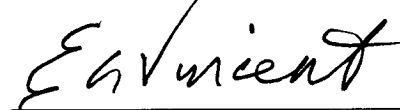
Further, Plaintiff gave notice to the putative class of the pendency of this suit via the publication required under Section 21D of the Securities Exchange Act of 1934, as amended by the Private Securities Litigation Reform Act of 1995 ("PSLRA"), 15 U.S.C. sec. 78u-4(a), via e-mail and telephone to some putative class members known to the Plaintiff, and via the Internet. To date, no putative class member has expressed any intention to participate in this litigation or volunteered to provide information or assistance of any kind.

Therefore, Plaintiff requests that the Court dismiss the instant action pursuant to Fed. R. Civ. P. 23(e) and 41(a), dismiss this action thirty days after confirmation of publication of the notice to the putative class members. As to those class members who presently own the securities at issue, PaineWebber Mortgage Acceptance Corporation V Mortgage Pass-Through Certificates Series 99-C1, Plaintiff proposes to serve notice on the Trustee for the Certificateholders of PaineWebber Mortgage Acceptance Corporation V Mortgage Pass-Through Certificates Series 99-C1.

As to former putative class members, Plaintiff proposes to provide notice in the same manner it published the notice required under the PSLRA of the pendency of this action. A proposed form of notice is attached as Exhibit A.

Respectfully submitted,

SUSMAN GODFREY L.L.P.



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Terrell W. Oxford  
Texas State Bar No. 15390500  
E. Lawrence Vincent  
Texas State Bar No. 20585590  
901 Main Street, Suite 4100  
Dallas, Texas 75202-3775  
Telephone: 214-754-1900  
Facsimile: 214-754-1933

AKIN GUMP STRAUSS HAUER & FELD LLP

R. Laurence Macon  
Texas State Bar No. 12787500  
Mary L. O'Connor  
Texas State Bar No. 15186900  
Talcott J. Franklin  
Texas State Bar No. 24010629  
1700 Pacific Avenue, Suite 4100  
Dallas, Texas 75201  
Telephone (214) 969-2800  
Facsimile (214) 969-4343

Attorneys for the Plaintiff  
ORIX CAPITAL MARKETS, LLC

**CERTIFICATE OF SERVICE**

I hereby certify that on the 18th day of March , 2003, a true and correct copy of the foregoing was served by facsimile and certified mail, return receipt requested, on the following counsel of record for defendants:

Scott L. Davis  
Gardere Wynne Sewell LLP  
3000 Thanksgiving Tower  
1601 Elm Street  
Dallas, TX 75201

A.B. Conant, Jr.  
Conant French & Chaney, LLP  
3880 Bank One Center  
1717 Main Street  
Dallas, TX 75201

George Wailand  
Cahill Gordon & Reindel  
Eighty Pine Street  
New York, NY 10005

A handwritten signature in cursive script, reading "E. Lawrence Vincent". The signature is written in dark ink and is positioned above a horizontal line.

E. Lawrence Vincent